

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

JAMES EVERETT SHELTON
Plaintiff

-against-

Civil Action No. 2:18-cv-02070 NIQA

TARGET ADVANCE, LLC
Defendants

**DEFENDANT TARGET ADVANCE, LLC's SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO ITS
SUMMARY JUDGMENT MOTION**

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Movant
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PRELIMINARY STATEMENT

Plaintiff is a professional litigant of cases under the Telephone Consumer Protection Act (“TCPA”) and has filed approximately 36 such cases (the number is growing) within the past two years. Plaintiff’s Complaint is his typical boilerplate Complaint used in all of his actions. However, in the case at hand the facts do not fit the pattern of alleged infractions of the TCPA alleged within Plaintiff’s Complaint. In fact, observing the facts in the light most favorable to Plaintiff, only one telephone call could have been considered in violation of the do not call list provision of the TCPA. All other calls which may have been received by Plaintiff from Defendant were only in response to Plaintiff’s explicit or implicit authorization to receive further calls.

Attached herewith, is a Declaration from Mark Davidov, Sales Manager for Target Advance, LLC who states that: 1) Defendant did not make robocalls; 2) that the company maintained a protocol wherein the sales staff would wipe any phone number off its marketing list wherever the recipient of the call would indicate that they either did not want calls or that they were on a DO NOT CALL LIST. PLAINTIFF DID NEITHER in his conversation with Target’s sales staff.

Instead, Plaintiff feigned interest in an attempt to solicit further calls so that Plaintiff could requests further damages in his pre-planned litigation.

Further, Mr. Davidov, in his Declaration states that upon review of the “lead generators” his company utilizes, Plaintiff’s phone number appears in multiple lead generators. This Court should be highly skeptical of any allegations by Plaintiff that he is an unwitting victim of unwanted calls. The calls he receives are due to his premeditated efforts to get his telephone number onto lead generator lists and the calls he receives are very much wanted as they are a necessary component of his business enterprise.

Plaintiff James Everett Shelton (“Shelton”), far from being a victim of alleged violations of the Telephone Consumer Protection Act (TCPA), is a serial litigant who has a business model based upon capitalizing on and encouraging his victims (Defendants in his cases) to contact him through a telephone he has allegedly placed on a Do Not Call List.

CONCLUSION

For the foregoing reasons, Plaintiff’s Complaint must be dismissed in its entirety and with prejudice pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), or in the alternative, judgment should be rendered for Defendant.

_Plaintiff has no standing to act as Plaintiff in this matter, nor has he suffered any injuries related to the alleged violations of the TCPA;

_Plaintiff remains outside the Zone of Interest for this statute;

_Plaintiff's claims against individual Defendant should be dismissed with prejudice for failure to state a claim upon which relief can be granted;

_Plaintiff did not receive Robocalls from Defendant;

_Plaintiff openly solicited further conversations with Defendant's sales people thus directly consenting to every telephone call received subsequent to the initial call; and

_Plaintiff likely committed premeditated acts to get his telephone number on the lists of various "lead generators" in an attempt to create sources for future TCPA litigation – thus Plaintiff is himself culpable for any violations of the TCPA.

Philadelphia, PA
February 7, 2019

Respectfully submitted,

Law Office of Norman M. Valz, P.C.



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Certification of Service

The undersigned certifies that true and correct copies of the foregoing was served upon all parties and or their legal counsel through the ECF System.

Philadelphia, Pennsylvania

Respectfully Submitted,



February 7, 2019

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